Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 152 of 2003

U.P. State Road Transport Corporation
through Regional Manager, Tanakpur.
..... Appellant.

Versus

1.Smt.Leela Devi W/o Gopal Singh Thapa,
2.Gopal Singh Thapa S/o Harak Singh,
All residents of Village-Vinkot, Tehsil
and District Pithoragarh.

..... Petitioner/Respondents.

Sri A.N.Sharma, learned counsel for the appellant,
Sri Rajendra Dobhal, learned counsel for the respondents.

Date: 27th Aug., 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S.Verma, J.

This appeal has been preferred by the Opp.party/appellant under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.03.2003 passed by the Motor Accident Claims Tribunal/District Judge, Pithoragarh in Motor Accident Claim Petition No. 10 of 2001, Smt. Leela Devi & another versus Regional Manager, U.P.S.R.T.C. & another, by which the Tribunal has allowed the claim petition filed by the petitioners for a sum of Rs. 5,21,000/- alongwith interest at the rate of 9% per annum against the Opp.party/appellant.

2- Brief facts giving rise to this appeal are that on 08.01.2001 the deceased Rajendra Singh was traveling in bus No. UP 02B/9049. At about 11.00 a.m. near Lohaghat

within the circle of P.S.Lohaghat. the said bus met with an accident due to rash and negligent driving of its driver in which Rajendra Singh died on the spot. It was alleged that the deceased was 23 years old. The deceased was serving in the army and was getting Rs. 5000/- per month as salary.

3- The Opp.party-U.P.S.R.T.C. contested the claim petition before the Tribunal by filing its written statement. They denied the death of deceased Rajendra Singh due to want of knowledge. The Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the U.P.S.R.T.C. has come up in this appeal.

4- The learned counsel for the appellant contended that the compensation awarded by the Tribunal is quite excessive, exorbitant and arbitrary and also the multiplier applied by the Tribunal is quite higher and is contrary to the law. We have gone through the record and perused the impugned judgment. The Tribunal while deciding issue No.1 on the basis of evidence on oath of P.W.1 & P.W.2 (the mother and father of the decease) held that the accident was occurred due to rash and negligent driving of the driver of offending bus. Further, the Tribunal on the basis of evidence of the aforesaid P.Ws. rightly held the age of the deceased as 23 years. Undisputedly, the deceased was employed in the Army and he was getting salary. Paper No.24-C/2 issued by Col D.K.Sharma is on the record of the Tribunal which shows that the deceased was getting a monthly salary of Rs. 6542/- at the time of accident but the said document has not been proved before the Tribunal by any witness or by the issuing authority. The claimants as P.W.1 and P.W.2 categorically stated on oath that the deceased was getting Rs. 5000/- per month as salary. In absence of any evidence the learned Tribunal rightly held

that the monthly salary of the deceased was Rs. 5000/- per month at the time of accident and after deducting one-third the dependency loss was rightly calculated as Rs. 39,996/- per annum. The multiplier has also rightly been applied. We find no error or illegality in the impugned judgment. Nothing has been shows to us on behalf of the appellant so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

5- The appeal has no force on merit and is dismissed. The impugned judgment and award is upheld. No order as to costs. The amount if deposited in the appeal shall be remitted to Tribunal concerned within a period of three months.

(B.S.Verma, J.) **(P.C. Verma, J.)**

27.08.2004
P.Singh